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Proposed programme budget for the biennium 2018–2019

Report on the use of the commitment authority and request for a subvention to the Residual Special Court for Sierra Leone

Twenty-first report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium 2018–2019

I. Introduction and background

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the use of the commitment authority and request for a subvention to the Residual Special Court for Sierra Leone (A/72/384), in which a subvention of $5,931,800 for the biennium 2018–2019 is requested to enable the Residual Special Court to continue to carry out its mandate. In his report, the Secretary-General requests the General Assembly to: (a) approve a subvention in the amount of $5,931,800 for the period from 1 January 2018 to 31 December 2019 for the Residual Special Court for Sierra Leone, with the understanding that any voluntary contributions received would reduce the utilization of the funding provided by the United Nations, which would be reported in the performance reports on the programme budget for biennium 2018–2019; and (b) appropriate an amount of $5,931,800 as a subvention to the Residual Special Court for Sierra Leone under section 8, Legal affairs, of the proposed programme budget for 2018–2019 (ibid., para. 59). In his report the Secretary-General also provides information: on the use, in 2017, of the commitment authority authorized by the General Assembly in its resolution 71/272 A; on the current financial situation of the Residual Special Court; and on options for future financing arrangements of the Court. During its consideration of the report, the Committee met with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 11 October 2017.

2. The report of the Secretary-General was prepared in response to General Assembly resolution 71/272 A, in which the Assembly authorized the Secretary-General to enter into commitments in an amount not to exceed $2.8 million to

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supplement the voluntary financial resources of the Residual Court for the period from 1 January to 31 December 2017, as a bridging financing mechanism, and requested the Secretary-General to report on the use of the commitment authority. In the same resolution, the Assembly endorsed the conclusions and recommendations contained in the report of the Advisory Committee (A/71/613), including the recommendation that a long-term financial solution be identified for the Court. The report of the Secretary-General addresses the use of the commitment authority granted for the Court for the period from 1 January to 31 December 2017 and provides information on the options for the future financing arrangements for the Court.

3. In his report, the Secretary-General recalls that the Residual Court was established by the Agreement between the United Nations and the Government of Sierra Leone in August 2010, with the concurrence of the Security Council, with the mandate to carry out a number of vital residual functions of the Special Court for Sierra Leone. The Special Court itself was established in 2002, with the primary purpose of prosecuting persons who bore the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law, committed within the territory of Sierra Leone. The Special Court indicted 13 individuals. Three indicted persons have died and one remains at large. Nine individuals, including Charles Ghankay Taylor, the former President of Liberia, were convicted and sentenced to terms of imprisonment ranging from 15 to 52 years (A/72/384, para. 6).

4. The Residual Court, which commenced operations on 1 January 2014, immediately following the closure of the Special Court, carries out its functions at its interim seat in The Hague, with a branch/sub-office in Freetown for witness protection and support and the coordination of defence issues (A/72/384, para. 8). The functions of the Court include investigations, including the holding of an administrative hearing concerning the violation of conditional early release by one indicted individual in 2016; maintaining, preserving and managing the archives of the Special Court and the archives of the Residual Special Court itself; engaging with witnesses to address their needs; supervision of the enforcement of sentences; and responding to requests for information and evidence and with respect to claims for compensation from national prosecuting authorities (ibid., para. 7).

II. Recent activities of the Residual Special Court

5. In his report the Secretary-General indicates that since the commencement of operations the Residual Court has made significant progress in reviewing and building on the structures and systems necessary for the proper functioning of the institution. In May 2017 the Court began reviewing the Rules Governing the Detention of Persons Awaiting Trial or Appeal or in Custody under the Supervision of the Residual Special Court (A/72/384, paras. 9 and 10).

6. In terms of its functions, the Residual Court continues to actively monitor and provide support to over 100 witnesses in Sierra Leone, as well as to witnesses located outside the country, and has conducted a nationwide comprehensive threat assessment for all witnesses, including the implementation of protective measures (A/72/384, para. 12). The Court, which also has responsibility for the supervision of the enforcement of sentences for persons convicted by the Special Court, currently has seven convicts in custody, one in the United Kingdom of Great Britain and Northern Ireland and six in Rwanda (ibid., para. 17) and provides assistance to national prosecuting authorities. Additional functions include: maintenance and

storage of, and access to, the archives, including the archives of the Special Court; the upgrading of the Court's electronic records management software; and the holding of the 3rd plenary meeting of the judges, in Freetown on 1 and 2 December 2016, to review rules and procedures, including a draft code of professional ethics and conduct for judges and proposed amendments to the rules, as well as to conduct judicial elections (ibid., paras. 24–28).

7. In his report the Secretary-General indicates that the Special Court for Sierra Leone has made a significant contribution to international criminal justice and that preserving its legacy is an important element of the work of the Residual Court, including its standing as the first international criminal court in history to adjudicate cases on crimes relating to child soldiers, attacks on peacekeepers and forced marriage. In that regard, the report details the non-remunerated activities in which the judges and other officials of the Court have participated over the past year in order to promote the legacy of the Special Court (A/72/384, paras. 29–34).

III. Current financial situation, resource requirements and request for a subvention

8. The report of the Secretary-General provides information on the intensive fundraising efforts of the Oversight Committee[1] and the principal officials of the Residual Court, including broadening of the donor base. These efforts include targeted communications to Member States and regional organizations (for example, letters and notes verbales), as well as bilateral meetings and briefings at different levels highlighting the dire funding situation of the Court. The report indicates that, despite this range of efforts, there are, at this stage, no prospects for any future voluntary contributions (A/72/384, paras. 47–52).

9. The total resource requirements of the Residual Court are estimated at $5,931,800 for the biennium 2018–2019, representing the entirety of the subvention request in view of the total absence of forecasted voluntary contributions for the biennium. In the light of the current financial situation of the Court, the Secretary-General indicates that the Court will not be able to continue its work in 2018 without the approval of an additional subvention (A/72/384, para. 35).

10. The Advisory Committee was informed, upon enquiry, that the review and approval of the budget of the Residual Court is a function of the Oversight Committee, composed of the Government of Sierra Leone, the United Nations and significant contributors to the Residual Court. The Oversight Committee also assists the Court in obtaining funding and provides advice and policy direction on all non-judicial aspects of the operations of the Court. The Committee was also informed that the Government of Sierra Leone provided in-kind support to the Special Court, including to the sub-office of the Court in Freetown, and security personnel. No voluntary contributions were received in either 2016 or 2017 from the Member States sitting on the Oversight Committee.

11. **The Advisory Committee is extremely concerned that no pledges or contributions are forthcoming and considers that this matter requires the personal engagement of the Secretary-General, with a view to increasing the level of voluntary contributions. The Committee stresses the need for the Residual Court to intensify its efforts to seek voluntary contributions, and**

[1] The Oversight Committee is composed of the Government of Sierra Leone, the United Nations and significant contributors to the Residual Court. Currently the following countries are members of the Committee: Canada, the Netherlands, Nigeria, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

expects those efforts to yield results, including by broadening the donor base for the Court and developing more innovative fundraising approaches.

12. **The Advisory Committee recognizes that requests for a subvention do not constitute formal budget proposals, nevertheless, the Committee reiterates its view that, as a matter of general principle, any request for a subvention from the regular budget should be fully justified (see A/71/613, para. 12). In the case of the Residual Court, this would allow the General Assembly to scrutinize its resource requirements and the staffing of the Court in view of the total absence of any voluntary funding. Furthermore, the Committee expects that the Court will continue to undertake all efforts to exercise budgetary discipline and to identify operational efficiencies.**

Staffing requirements

13. The report indicates (A/72/384, annex III) that staffing requirements consist of a total of 13 full-time staff members based at the two locations (Freetown and The Hague), with the Residual Court relying on short-term consultancies, expert services, interns and pro bono services to supplement its staff resources, as required:

(a) The Hague Office staff consisting of six staff members: one Registrar (D-2); one Prosecution Legal Adviser (P-4); one Legal Officer in the Registrar's Office (P-4); one Associate Legal Officer (P-1); one Archiving Officer (P-2); and one Office Manager (P-2). In addition, one position, funded by general temporary assistance (General Service (Local level)), will provide archiving assistance;

(b) The Freetown sub-office consisting of seven staff members: one Senior Legal Officer (P-4); one Associate Defence Legal Officer (P-1); three Witness Protection and Support Supervisors/Officers (National Professional Officers); one Administrative Assistant (General Service (Local level)); and one Cleaner (General Service (Local level)).

14. Additional details on staffing requirements by category, level and location for 2018–2019, inclusive of judicial functions are provided in the report (A/72/384, annex III). The report also indicates that the Registrar is the only senior full-time staff member of the Residual Court, with the President, judges (called from the roster as and when needed), the Prosecutor and the Principal Defender all working remotely, only as necessary, and remunerated on a pro rata basis (ibid., para. 44).

15. The annual requirements for compensation to judges are estimated at $182,500 in 2018 and in 2019. The Advisory Committee was informed, upon enquiry, that the compensation for judges for 2018 and 2019 comprises $52,800 for non-judicial functions and $129,700 for judicial functions in each year. The Committee notes that, despite the absence of any related judicial activity in recent years (see A/71/613, para. 15), related resource requirements continue to be reflected in the request for subvention. **The Committee notes that the requirements include resources for the costs of judicial activities that have not taken place in previous years. The Committee reiterates its view that the Residual Court should adopt a more realistic approach to budgeting for judicial and other activities that reflect the actual needs of the Court and past experiences, as well as efforts to identify further efficiencies, without prejudice to the judicial requirements of the Court (ibid., para. 16).**

16. The Advisory Committee was provided, upon enquiry, with the job descriptions of the 13 full-time staff in both locations. The Committee notes that that staff requirements include the posts of Associate Legal Officer (P-1) and the post of Office Manager (P-2) in The Hague, providing additional legal support to

the Registry and performing general administrative duties, respectively, while the post of Associate Defence Legal Officer (P-1) in Freetown serves as focal point for convicted persons and their family members. In this connection, the Committee was also informed that, following a threat assessment conducted between late 2016 and early 2017, the number of witnesses considered vulnerable and requiring protection and support had decreased from 161 to 109. The Committee also notes that six convicts are in custody in Rwanda.

17. The Advisory Committee notes that the Oversight Committee has already approved the budget for biennium 2018–2019 and that the posts of the Residual Court are not part of the staffing table financed under the programme budget of the United Nations.[2] **The Committee is of the view that the functions of the Associate Legal Officer (P-1) and Associate Defence Legal Officer (P-1) posts should be performed by National Professional Officer posts in each location, given the increasingly residual nature of the Special Court, and that alternative staffing arrangements should be established to provide administrative services in lieu of the Office Manager (P-2) and Cleaner (General Service (Local level)) posts. While recognizing that the staffing requirements are not being submitted for approval of the General Assembly, the Committee stresses that, considering the chronic and persistent funding shortfalls, the Court should ensure that only the most essential staffing requirements are funded.**

Non-staffing requirements

18. The requirements for travel are estimated at $300,600 for each year of the biennium, compared with $290,100 for 2017. Upon request, the Advisory Committee was provided with a breakdown of the travel requirements: the Committee notes with concern the escalating travel requirements at a time when judicial activity is minimal and the workload of the Residual Court appears to be declining. The Committee also notes that the expenditures relate to trips for fund-raising purposes, despite the ineffectiveness of past efforts in raising additional funds for the activities of the Court. **In light of the persistent scarcity of financial resources, the Committee continues to stress that the Court should limit travel requirements to travel directly associated with its core functions, for example through measures such as the combining trips, advance booking of air tickets and the use of alternative means of communication, including videoconferencing. The Committee reiterates that the primary consideration in authorizing official travel should be whether direct face-to-face contact is necessary for the implementation of the Court's mandate (see also A/71/613, para. 18).**

19. The report indicates estimated non-staff requirements for each year of the biennium 2018–2019, including a total of $588,900 for contractual services, of which $538,900 is for non-judicial services and $50,000 for judicial services (see A/72/384, annex II). The report indicates that, among other efficiency measures introduced, the sub-office of the Court in Freetown is co-located with the National Witness Unit, while the interim seat of the Court in The Hague is co-located and continues to share an administrative and technical platform with the International Tribunal for the Former Yugoslavia (A/72/384, paras. 41–46). **The Advisory Committee continues to stress that further efforts should be made to lower the costs of the Court and to identify efficiencies.**

[2] The budget for the biennium 2018–2019 was approved by the Oversight Committee on 26 July 2017.

IV. Future financing arrangements for the Residual Special Court

20. The Secretary-General provides information in his report on alternative options for the future financial arrangements for the Residual Court in view of recent General Assembly resolutions 67/246, 70/248 A and 71/272 A endorsing the concerns of the Advisory Committee in this regard. The Secretary-General also indicates that the Secretariat has not been able to identify any additional alternative financing options for the Court apart from those that have already been examined (see A/72/384, para. 54) and that a further review was conducted of the options for financing the Court that it had previously identified (ibid., para. 55). The Secretary-General indicates that the International Residual Mechanism for Criminal Tribunals will continue to provide logistical and administrative support to the Court on a cost-reimbursable basis upon the closure of the International Tribunal for the Former Yugoslavia (A/72/384, para. 54).

21. The Advisory Committee recalls its observations and recommendations regarding the need for further analysis and development of existing options, as well as the possible identification of other options for a long-term solution to the financing of the Residual Court (see A/71/613, para. 23). With regard to a comparative assessment of co-locating the offices of the Court with the International Residual Mechanism, the Secretary-General maintains in his report that the cost of relocating the Court to Arusha would be greater than maintaining it in The Hague, and he also indicates a number of logistical challenges and operational risks (A/72/384, para. 43). Upon enquiry, the Committee was provided with the comparative analysis and was informed that the Court had considered the possible consolidation of financial and human resources, however, the distinct mandate of the respective institutions, including the fact that the Court is not a United Nations body, imposed limitations in this regard. The Committee was also informed that cost savings are being derived from existing administrative-sharing arrangements.

22. **The Advisory Committee acknowledges the efforts to examine alternative financing options for the residual activities of the Residual Court, however, it is not convinced of the comprehensiveness or rigour of the approach taken thus far. The Committee is of the view that co-locating the Court to the premises of the International Residual Mechanism in Arusha requires further consideration, particularly given the possible savings and economies of scale associated with the nationalization of staff positions and the possibility of cost-sharing support arrangements, including by the International Residual Mechanism. The Committee continues to stress the compelling need for a sustainable long-term financing solution for the Court, not involving an institutionalized dependency on the provision of subventions from the United Nations programme budget.**

V. Conclusions and recommendations

23. **The Advisory Committee reiterates its concern regarding the sustainability of voluntary contributions to fund the activities of the Residual Court and legacy activities (A/70/7/Add.30, para. 21, and A/71/613, para. 23). The Committee therefore recommends that the General Assembly request the Secretary-General to analyse the options concerning the long-term arrangements for the Residual Court in greater detail, including by identifying possible savings and economies of scale, and to report thereon in his provision of details on the use of the commitment authority.**

24. **The Advisory Committee also notes that, after three consecutive requests for subventions to support the Residual Court, including the current request for the biennium 2018–2019, the practice is now no longer exceptional in nature. At the same time, the Committee notes that there is no change to the voluntary nature of the funding arrangements for the Court.**

25. **In view of the projected funding shortfall for both 2018 and 2019, the Advisory Committee therefore recommends that the General Assembly authorize the Secretary-General to enter into commitments, as a bridging financing mechanism, in an amount not to exceed $2,300,000 for the period from 1 January to 31 December 2018. The Committee recommends that the Assembly request the Secretary-General to report, during the main part of its seventy-third session, on the use of the commitment authority.**

26. **The Advisory Committee reiterates that the final use of the commitment authority will depend upon the receipt of voluntary contributions from donors. The Committee continues to stress that its recommendations are based on the condition that:**

(a) **The Residual Court intensifies its efforts to seek voluntary contributions, including through more innovative fundraising approaches;**

(b) **If voluntary contributions are received in excess of the remaining requirements for the Residual Court for 2018, any corresponding funding provided under the commitment authority to the Court for the period would be refunded to the United Nations;**

(c) **Additional measures for achieving efficiencies in the Residual Court are taken.**